

SB 399

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Senator Andrea Stillman
Legislative Office Building
Room 3600
Hartford, CT 06106-1591

Dear Andrea:

The question the court addressed in Deoliveira v. Liberty Mutual Insurance Co., 273 Conn. App. 487 (2005) was "whether Connecticut recognizes a cause of action against an insurer for bad faith processing of a workers' compensation claim." The Court noted that under Connecticut law [Connecticut General Statutes § 31-284(a)] the Workers' Compensation Act is the sole and exclusive remedy available to an employee, or the dependant of an employee who sustains personal injuries or dies in the course of his employment.

In that case the claimant filed a claim for Workers' Compensation benefits on May 21, 1989 as a result of an injury to his back. He subsequently developed emotional problems, including depression, which he attributed to his inability to work as a result of his physical injuries and the loss of self-esteem as a result of the nonpayment of benefits and the manner in which he had been treated by the insurance carrier.

On March 30, 1995 the Workers' Compensation Commissioner issued a Finding and Award which concluded that the claimant's back injury was compensable and the carrier's denial of that claim was unreasonable and caused unnecessary delay. The Commissioner also awarded the claimant's attorney \$4,000 as fees. The Commissioner determined that the claimant's psychological injury was a result of his frustration with the treatment he had received by the carrier and the delays encountered in resolving his claim and was not substantially related to his work injury. Notwithstanding the award, the carrier failed to make any payment to the claimant until April 1998, and it did not pay the attorney fees until September 1999.

Even though the Commissioner found that the claimant's psychological injury was not compensable, the Court concluded that the exclusivity provisions of the Workers' Compensation Act ([§ 31-284(a)] precluded the claimant from filing a suit in the Superior Court alleging that the carrier has committed a tort against him. Its decision was based on its conclusion that the legislature enacted a detailed legislative scheme to address the harm caused by an insurer's improper denial of or delay in paying compensation benefits.

The detailed legislative scheme to which the court referred is as follows:

1. Under C.G.S. § 31-278 Commissioners have the authority to hear an employee's claim that "through the fault or neglect of an employer or insurer, the adjustment or payment of compensation due ... [has been] unduly delayed" and to assess a civil penalty of up to \$500 for each case of delay. C.G.S. § 31-288(b). The statute does not state who receives such penalty.
2. Under C.G.S. § 31-300 if an employer or insurer unreasonably contests liability, Commissioners have authority to award attorney's fees to the employee.
3. Under C.G.S. § 31-300 if a Commissioner determines that "Through the fault or neglect of the employer or insurer," payments or adjustments in payment have been delayed "unduly" or "unreasonably," the Commissioner may include interest and attorney's fees in an award.
4. Under C.G.S. § 31-303, if an employer or insurer fails to make payments due under an Award or Voluntary Agreement within the statutorily prescribed period, a Commissioner shall assess "a penalty for each late payment, in the amount of [20 percent] of such payment in addition to any other interest or penalty imposed."

I believe the following language in the decision is the key to the necessity for legislative action:

"A review of the legislative history of the provisions of the act addressing delayed payments evinces not only that the legislature, when enacting these provisions, was mindful that employers and insurers were in fact delaying payments, but also that it was aware of the stress and anxiety that naturally could result from such delays. As the legislature was considering various remedial measures over the years, legislators and private individuals have attested to the misconduct by employers and insurers in delaying payments."

It appears to me that this decision only serves to encourage insurers to delay making payments clearly due under the Workers' Compensation Act. The victims of any such delay are among the most needy of Connecticut residents. I believe the necessary remedy would be to expressly authorize a cause of action for bad faith processing of a workers' compensation claim. This could be accomplished by simply enacting a statute that stated, in substance: Notwithstanding the provisions of Section 31-284(a) of the General Statutes any person aggrieved by the bad faith processing of a workers' compensation claim by an employer or insurer shall have the right to bring an action seeking tort damages in the superior Court.

Alternately, the Commissioner could be authorized to award a claimant up to a maximum of \$10,000.00 (or some figure large enough to encourage voluntary, good-faith compliance) upon a showing of bad faith processing of a workers' compensation claim by an employer or insurer.

If you have any questions please feel free to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Warren", with a long horizontal flourish extending to the right.

Warren Miller

WM/rem

